



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

Mr. Bryan A. Ashby  
Manager, Surface Water Discharges Section  
Division of Water  
Delaware Department of Natural Resources and Environmental Control  
89 Kings Highway  
Dover, Delaware 19901

Re: Draft NPDES General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (DE051195)

Dear Mr. Ashby:

Thank you for the opportunity to review the above-referenced draft permit, which EPA received June 27, 2013 from the Delaware Department of Natural Resources and Environmental Control (DNREC). Based on EPA's review to date, we are providing the following preliminary general comments, which serve to clarify and refine the draft permit in order to ensure compliance with 40 CFR Part 122 and to meet EPA's expectations for effective municipal stormwater permitting within Region III. Areas of EPA's concern include, but are not limited to:

- EPA recognizes that this draft permit is the first general permit for storm water discharges from small municipal separate storm sewer systems (MS4) issued by DNREC. However, DNREC previously issued individual Phase II MS4 permits to the cities of Dover and Newark, and Kent County in 2003; therefore, those systems should not be considered new permittees when they apply for coverage under this general permit. As such, the permit must contain different requirements for new versus renewal permittees in order to prevent backsliding and to continue improving the quality of Delaware's waterways. For example, see the separate time-frames for new and renewal permittees to complete and/or update the public Education and Outreach Program (p. 12 of draft permit). However, there are a number of other areas in the permit where this distinction must still be made. Some areas of concern include, but are not limited to, the adoption of ordinances to prohibit illicit discharges and address post-construction stormwater quality for new permittees only, and additional storm sewer systems mapping and illicit discharge screening requirements for renewal permittees. The attached permit mark up contains some specific instances where changes are required. Following is an example of mapping language that provides distinct provisions for new versus renewal permittees: "For new permittees, develop the map(s) of your regulated small municipal separate storm sewer systems and the information on all outfalls from your regulated small MS4 by the end of the fourth (4th) year of permit coverage. For renewal permittees, the existing map(s) of your regulated small MS4 shall be updated and maintained as necessary during each year of coverage under the permit."



- The draft permit relies on the permittee to develop a Storm Water Pollution Prevention and Management Program (SWPP&MP) and to identify several measureable goals. This is inappropriate because it is the responsibility of the permitting authority and not the individual permittee to determine what permit conditions will meet the maximum extent practicable standard. Furthermore, EPA has affirmed in its Municipal Stormwater Permitting Approach Document (enclosed) that MS4 permits should contain minimum requirements and identify specific goals to be used to determine whether adequate progress is being made. DNREC also can refer to EPA's guidance on measureable goals (available at <http://cfpub.epa.gov/npdes/stormwater/measurablegoals/index.cfm>), and EPA's MS4 Permit Improvement Guide (available at [http://www.epa.gov/npdes/pubs/ms4permit\\_improvement\\_guide.pdf](http://www.epa.gov/npdes/pubs/ms4permit_improvement_guide.pdf)).
- Likewise, Part II.D.2 includes the requirement to develop and implement a Wet Weather Performance Monitoring Plan; however DNREC needs to add to this section of the permit enforceable deadlines for submittal of the plan as well as requirements for how often the analyses must be performed and minimum plan contents.
- The draft permit must include requirements to address impaired waters in advance of a TMDL as well as situations where there is already an approved TMDL in place. In addition, the permit must require the permittee must to design its SWPP&MP to prevent increased loadings of the pollutant(s) of concern to any impaired waterbody and ultimately not cause or contribute to a violation of water quality standards.
- Throughout the permit, there are varying references to coverage for both "a permittee" and "permittee(s)". This presents confusion. While a general permit supplies coverage for a number of permittees, the permit should be written to address those individual permittees that will be applying for coverage, *i.e.*, references should be in the singular, "permittee". It bears noting that this permit is very different from the New Castle County permit in that it is not one individual permit that pertains to a group of connected entities seeking collective coverage; rather it is a general permit under which many individual entities will apply for separate coverage. EPA recommends that the permit be consistent in addressing applicants as a single permittee throughout the permit.
- This general permit is also different from the New Castle County permit in that there are no principal permittees and co-permittees. This permit will provide coverage to individual entities regulated as small MS4s. Therefore, it is recommended that all references to "principal permittee" throughout the permit be omitted.
- Part II.A.2.a.i requires the permittee to develop an "expeditious" schedule for removal of an illicit discharge if "prompt" elimination is not possible. EPA finds this paragraph to be vague and unenforceable, so we recommend that DNREC remove the language entirely in order to establish a clearer, more enforceable document.
- Part II.A.5.c requires each permittee to implement a street sweeping program on roads that it owns, operates, or maintains to adequately remove pollutants and improve water quality. EPA recommends that DNREC include a condition in the permit which will

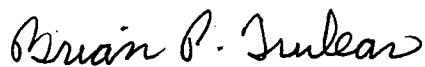
require each municipality to enter into an agreement with the Delaware Department of Transportation (DelDOT) where DelDOT maintains the roads in that jurisdiction and/or to require DelDOT to retain its own permit coverage where it owns and operates roadways within each municipality.

- Part II.A.5.d.ii exempts construction sites from following a Nutrient Management Plan when applying nutrients “to achieve either temporary or permanent stabilization”. EPA would like an explanation as to why construction sites are exempt from this requirement.
- The SWPP&MP is missing essential public participation requirements from Public Education/Public Involvement and Storm Water Management during Construction Minimum Control Measures (MCMs). Federal regulations in 40 CFR 122.34(b)(2)(i-ii) require permittees to “comply with State, Tribal and local public notice requirements when implementing a public involvement/participation program” as well as to “make efforts to reach out and engage all economic and ethnic groups” during the public participation process. Additionally, 40 CFR 122.34(b)(4)(ii)(E) requires “procedures for receipt and consideration of information submitted by the public”. EPA recommends that DNREC include appropriate language to comply with these requirements
- EPA encourages DNREC to include a requirement in the permit associated with Part II.A.3, “to provide appropriate educational and training measures for construction site operators.” Such a provision is also required by 40 CFR 122.34(b)(4)(iii).
- EPA recommends that, at Part IV.A Flow Measurement, the permit be revised to require a standardized flow measurement device and scientific practices to be employed by all MS4s within Delaware. This standardization would be helpful to increase usability of monitoring data throughout the entire state.
- Part V.L Civil and Criminal Liability should include the range of penalties as detailed in the Clean Water Act (CWA) sections 309(c-d). EPA has sample language which will be provided to DNREC in the upcoming days.

In addition to the comments listed above, EPA is providing the enclosed proposed markup of the draft permit and factsheet with our supplemental comments. We request that DNREC not proceed with the reissuance of this permit until we have had the opportunity to discuss and resolve our comments and concerns. EPA has until September 25, 2013 to provide additional comments and/or object to this permit.

EPA looks forward to continuing to work in cooperation with DNREC to finalize this permit. If you have any questions, please do not hesitate to contact me, or have your staff contact Ms. Liz Ottinger at 215-814-5783.

Sincerely,

A handwritten signature in black ink, reading "Brian P. Trulear". The signature is written in a cursive style with a large, stylized 'B' and 'T'.

Brian Trulear - Acting Chief  
NPDES Permits Branch  
Water Protection Division

Enclosures

cc: Sandra Goodrow, DNREC